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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/751,858 | 12/29/2000 | Susan R. Santos | 30644 | 8518 |

7590 07/13/2004

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EXAMINER

MEINECKE DIAZ, SUSANNA M

| | |
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| ART UNIT | PAPER NUMBER |
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3623

DATE MAILED: 07/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/751,858

Applicant(s)

SANTOS ET AL.

Examiner

Susanna M. Diaz

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 December 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 December 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

1. Claims 1-21 are presented for examination.

Claim Objections

2. Claim 1 is objected to because of the following informalities:

Claim 1, line 13, insert --at-- before "least"

Appropriate correction is required.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 12-21 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

- (1) whether the invention is within the technological arts; and
- (2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory

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subject matter. For a process claim to pass muster, the recited process must somehow apply, involve, use, or advance the technological arts.

Furthermore, mere intended or nominal use of a component, albeit within the technological arts, does not confer statutory subject matter to an otherwise abstract idea if the component does not apply, involve, use, or advance the underlying process. Claims 12-21, at best, hint at the use of technology by displaying data. However, it is not clear that the data is displayed electronically. Additionally, the mere electronic display of data is considered to be a nominal recitation of technology. While claims 12-21 produce a useful, concrete, and tangible result, they are deemed to be non-statutory for failure to apply, involve, use, or advance the technological arts. In order to overcome this rejection, it is respectfully suggested that the claims be amended to expressly incorporate technology (e.g., a computer processor) as performing at least one of the core steps of the invention (e.g., an analysis step).

Appropriate correction is required.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jensen (U.S. Patent No. 6,065,000).

Jensen discloses a system for facilitating statistical analysis of events, the system comprising:

[Claim 1] a first input device operable to receive raw data regarding the events, including the nature, place, time, and date of each event, and convert the raw data into formatted data having a suitable electronic format (col. 3, lines 12-15; cols. 9-10, Table 5 (see at least # 20, 22, 29-33, 38); cols. 11-12, Table 6; col. 13, lines 1-12);

a memory storage device operable to store the formatted data (col. 12, line 65 through col. 13, line 14);

a code segment operable to perform date gap analysis and control chart analysis on the formatted data to produce an analysis output (Figs. 5-8, 10, 15, 22, 69, 70 -- Accidents may be graphed or charted based on frequency by day of week, time of day, and over a given period of time, such as a month, year, or specified date range; Figs. 31, 42, 43 -- An assessment of appropriate corrective actions to be taken can be recorded and displayed as an analysis output);

a display device operable to display the analysis output (Figs. 31, 42, 43 -- An assessment of appropriate corrective actions to be taken can be recorded and displayed as an analysis output); and

a second input device operable to allow a user to request a more specific analysis of at least one identified event, with the identified event being user-selected from the display (Fig. 43; col. 3, lines 12-15; col. 13, lines 1-12 -- A user may access additional information regarding a particular incident. For example, Fig. 43 shows a

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"Performance Analysis" section that summarizes accidents associated with a given individual. "Advanced Investigation," i.e., further analysis, may also be requested);

[Claim 3] the events involving employee illness and injury (cols. 9-10, Table 5; cols. 11-12, Table 6; col. 13, lines 1-12);

[Claim 4] the analysis output being displayed in a chart format (Figs. 31, 42, 43 --

An assessment of appropriate corrective actions to be taken can be recorded and displayed as an analysis output. The specific corrective action entered is displayed in the row labeled "Corrective Action"; therefore, this display of data is a type of mini chart);

[Claim 6] the second input device being selected from the group consisting of: computer mice, trackballs, light pens, touch sensitive screens, keyboards (col. 3, lines 12-15; col. 13, lines 1-12).

As per claim 1, Jensen provides various examples of date gap analysis and control chart analysis. Jensen also allows information regarding corrective actions responsive to workplace incidents to be recorded and displayed; however, Jensen does not expressly teach that a code segment makes workload adjustments based on these analyses. Official Notice is taken that it is old and well-known in the art of workplace management to adjust workloads accordingly in response to dangerous working conditions. For example, an increase in the frequency of accidents and/or dangerous work-related decisions being made by overworked doctors, nurses, truck drivers, etc. have led safety proponents in each respective industry to push for a lower limit on the

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number of consecutive hours an employee may work. This is an example of a workload adjustment being made in response to analysis of workplace-related injury and accident statistics. Similarly, Jensen is directed toward analysis of workplace-related injury and accident statistics in order to better monitor these incidents for accurate reporting to safety governing bodies, such as OSHA (abstract); therefore, the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Jensen to generate corrective actions involving workload adjustments in order to extend the usefulness of Jensen's invention to industries where many workers are negatively affected by poor workload conditions, thereby making Jensen's invention more versatile and comprehensive in nature. Furthermore, the Examiner asserts that the computer automation of a well-known manual process is old and well-known in the art. Computer automation of a well-known manual process facilitates more rapid, efficient, and accurate performance of the process in comparison to the same process performed entirely by hand. Therefore, the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Jensen's computer system code segment to make the workload adjustments based on date gap analysis and control chart analysis in order to facilitate more rapid, efficient, and accurate performance of the workload adjustments as opposed to if they were performed entirely by hand.

Regarding claim 2, Jensen's system receives accident reports as users enter them, which may or may not be daily. Accident reports are only entered when accidents occurs; therefore, if accidents did not occur daily, then reports would likely not be

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entered daily. On the other, the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention for Jensen's input device to receive data on a daily basis in order to maintain an accurate and updated account of incidents, especially at a location(s) where reportable incidents occur on a daily basis.

As per claim 5, Jensen displays analysis output in a graphical format, such as a chart format; however, Jensen does not expressly teach that the analysis output may be displayed in a tabular format. Official Notice is taken that it is old and well-known in the art to display data in a tabular form in order to meet the needs of users who prefer their reported data organized and selectable by tabs. Therefore, the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to provide Jensen's users with the option of having the analysis output displayed in a tabular format in order to meet the needs of users who prefer their reported data organized and selectable by tabs.

[Claims 7-11] Claims 7-11 recite limitations already addressed by the rejection of claims 1-6 above; therefore, the same rejection applies.

Furthermore, as per claim 9, the fact that Jensen can filter and sort data by date, incident types, etc. is indicative of the fact that Jensen's invention inherently comprises code segment for separating data into a plurality of data sets based upon a predetermined separation criteria.

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[Claims 12-16] Claims 12-16 recite limitations already addressed by the rejection of claims 1-11 above; therefore, the same rejection applies.

[Claims 17-21] Claims 17-21 recite limitations already addressed by the rejection of claims 1-11 above; therefore, the same rejection applies.

Furthermore, as per claim 21, Jensen discloses that different data sets may be analyzed and displayed in resulting charts. For example, Fig. 43 displays a mini chart corresponding to "Accident History," another mini chart corresponding to "Performance Analysis," another one showing "Corrective Action Assigned to," etc. All of these mini charts are displayed simultaneously and are representative of different data sets.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Garber et al. (U.S. Patent No. 5,893,070) -- Discloses a system and method for developing and maintaining a workplace respiratory protection program.

Garber et al. (U.S. Patent No. 5,752,054) -- Discloses a system and method for developing and maintaining multiple workplace protection programs.

Peterson et al. (U.S. Patent No. 5,884,275) -- Discloses a method to identify hazardous employers.

Murray ("Why Managers Buy In to Safety") -- Discloses gap analysis and analysis of injuries or illnesses with relation to a safety program.

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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susanna M. Diaz whose telephone number is (703) 305-1337. The examiner can normally be reached on Monday-Friday, 9 am - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (703) 305-9643.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Receptionist whose telephone number is (703)308-1113.

Any response to this action should be mailed to:

**Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450**

or faxed to:

(703)305-7687 [Official communications; including
After Final communications labeled
"Box AF"]

(703)746-7048 [Informal/Draft communications, labeled
"PROPOSED" or "DRAFT"]

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, Arlington, VA, 22202, 7th floor receptionist.

Susanne Diaz
Susanna M. Diaz
Primary Examiner
Art Unit 3623
July 8, 2004